IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 122 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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NATIYABHAI KESARABHAI SANGADA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DF AMIN for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 This appeal is directed against the common judgment and order dated 11th December, 1998 passed by the learned Addl. Sessions Judge, Panchmahals, Camp at Dahod in Sessions Cases No.77 of 1994 and 86 of 1995 whereby, the appellant, who was one of the four accused persons in Sessions Case No.77 of 1994, was convicted for the offence punishable u/s. 302 of Indian Penal Code, 1860 [for short, “the I.P.C.”] and was acquitted for the offences punishable u/s. 143, 147, 148 & 149 of the I.P.C. and Section 135 of the Bombay Police Act. For conviction u/s. 302 of IPC, the appellant was sentenced to undergo imprisonment for life with fine of Rs.1000/- and in default of payment of fine, simple imprisonment for a further period of one month. The appellant was given the benefit of set-off. The other accused persons in the said Sessions Case were acquitted of all the offences alleged against them. The accused person in

Sessions Case No.86 of 1995 was also acquitted of the offences alleged against him.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 07.02.1994, between 0800 – 0830 hrs., deceased – Saburiben and three other co-workers had gone for their daily work in their agricultural field. While they were doing their work, the appellant came there and shot around 3 – 4 arrows from a bow at the deceased on account of which the deceased sustained severe injuries and died on the spot.

2.2 On witnessing the said incident, the other co-workers ran away from the scene of offence. Subsequently, the appellant fled the said place and several villagers gathered at that place.

2.3 On hearing about the said incident, the

husband of the deceased reached the said place and noticed the dead body of the deceased lying in a badly bruised condition in the agricultural field. Thereafter, he went to Limkheda Police Station for the purpose of registering an offence against the accused persons. The P.S.O. of Limkheda Police Station noted down the same and registered the offence as Limkheda Police Station I – C. R. No.18 of 1994 for offences punishable u/s. 143, 147, 148, 149 and 302 of IPC and Section 135 of the Bombay Police Act against six accused persons, including the appellant herein.

2.4 The P.S.O. of Limkheda Police Station, thereafter, send the F.I.R. along with 'yaadi' to P.S.I. one Udaysinh Ratansinh Rathod, who carried out necessary investigation into the matter. The Investigating Officer went to the scene of offence and prepared inquest 'panchnama' in the presence of 'panchas'. 'Marnottar' form was filled up and necessary arrangement was made for sending the dead body for performing post-mortem.

'Panchnama' of the scene of offence was done in the presence of 'panchas' and 'muddamal' articles were also collected.

2.5 From 10.02.1994 onwards investigation into the case was handed over to another P.S.I.. On 18.02.1994 some of the accused persons were arrested and sent to judicial custody. In the meanwhile, the 'muddamal' and other articles were sent to F.S.L. for examination. On receipt of the F.S.L. report, PM note and other papers, they were kept in the investigation file.

2.6 Further investigation was carried out and statements of several witnesses were recorded. As cogent evidence was found against the appellant, the I.O. filed charge-sheet against him & other accused persons, wherein original accused no. 5 was shown as absconding, before the Court of learned Judicial Magistrate, First Class, Devgadh – Baria.

2.7 As the charges were exclusively triable by the Court of Sessions, the learned J.M.F.C., Devgadh Baria committed the case to the Sessions Court, Panchmahals, Camp – Dahod and the same was numbered as Sessions Case No. 77 of 1998. Subsequently, the case was handed over to the learned Addl. Sessions Judge for disposing the same on merits. The learned Addl. Sessions Judge framed the charge against the appellant and as the appellant pleaded not guilty to the said charge, trial was conducted against the appellant and other accused persons.

2.8 In the meanwhile, original accused no. 5 also came to be arrested and supplementary charge-sheet came to be filed against him before the Court of learned J.M.F.C., Devgadh – Baria. Ultimately, the said accused person was tried in Sessions Case No. 86 of 1995. As both the Sessions Cases had arisen from one and the same offence, they were heard together by the learned Addl. Sessions Judge and disposed of by the

impugned common judgment.

3.0 To prove the guilt against the appellant and other accused persons, the prosecution has examined in all fourteen witnesses namely, PW – 1 Dr. Madhura Milandbhai Bhagvat at Exhibit – 27, PW – 2 Gulab Mulabhai at Exhibit – 34, PW – 3 Masuri Fulji at Exhibit – 38, PW – 4 Budhliben Ghanabhai at Exhibit – 39, PW – 5 Kantaben Amrabhai at Exhibit – 40, PW – 6 Maganbhai Maijibhai at Exhibit – 41, PW – 7 Amarsinh Ghanabhai at Exhibit – 44, PW – 8 Aapsinh Saburbhai at Exhibit – 46, PW – 9 Maganbhai Sonabhai at Exhibit – 52, PW – 10 Chaganbhai Manabhai at Exhibit – 54, PW – 11 Kesrisinh Pujasinh Rathod at Exhibit – 55, PW – 12 Hirabhai Damor at Exhibit – 56, PW – 13 Shankarbhai Pitambhai Patel at Exhibit – 64 and PW – 14 Udaysinh Ratansinh Rathod at Exhibit – 65.

3.1 The prosecution has also relied upon several documentary evidence and, more

particularly, the evidence in the form of oral depositions of three witnesses, viz. PW – 3 at Exhibit – 38, PW – 4 at Exhibit – 39 and PW – 5 at Exhibit – 40 whom the prosecution claims to be eye-witnesses to the incident in question and the post-mortem report at Exhibit – 28.

3.2 On submission of the closing 'purshis', the learned Addl. Sessions Judge recorded the further statement of the accused persons u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge convicted the appellant for the offence u/s. 302 of IPC and imposed sentence as narrated in the earlier part of this judgment.

4.0 Mr. D. F. Amin learned Advocate for the appellant has submitted that the prosecution case entirely rests upon the evidence led by three witnesses, whom it claims to be eye-witnesses to the alleged incident in question. He has

submitted that the said witnesses are interested witnesses since a dispute pertaining to an agricultural land was ripe between the parties and in order to settle the score, the appellant and his relatives have been falsely implicated in the alleged offence in question.

4.1 Learned Advocate has further submitted that the fact that the deceased died a homicidal death is not disputed. However, there is no evidence on record, except the oral evidence of the so-called three eye-witnesses, to connect the appellant with the crime in question and when the evidence of the said three witnesses, who are interested witnesses, are not found to be trustworthy, then they could not be relied upon for recording conviction. He has, therefore, submitted that the Court below has committed serious error in convicting the appellant for the alleged offence in question relying on the evidence of the so-called three eye-witnesses.

5.0 Mr. K. P. Raval learned APP has submitted that the evidence on record and, more particularly, the evidence in the form of depositions of the three eye-witnesses viz., PW – 3 Masuri Fulji at Exhibit – 38, PW – 4 Budhliben Ghanabhai at Exhibit – 39 and PW – 5 Kantaben Amrabhai at Exhibit – 40, clearly establish the guilt against the appellant. He has further submitted that the post-mortem report of the deceased and the deposition of the Medical Officer (PW – 1, Dr. Madhura Milandbhai Bhagvat at Exhibit – 27) also support the case of the prosecution. Hence, the Court below was completely justified in convicting the appellant for the alleged offence in question.

6.0 We have heard learned counsel for the respective parties and perused the entire oral as well as documentary evidence on record. Before proceeding with the matter on merits, it would be pertinent to note that the appellant has not disputed the factum of his presence at the scene

of offence, at the relevant point of time, before the Court below or, in that matter, even before this Court. It is also not disputed that the alleged incident in question took place in broad day-light and, at such a time, when a majority of the workers engaged in agricultural work would be in the fields.

7.0 The post-mortem report of the deceased is at Exhibit – 28. From the said report, it is evident that the deceased sustained in all eleven major bodily injuries, out of which six injuries were such which could have been sustained by a sharp-edged weapon; and, the remaining injuries could have been sustained by some hard and blunt substance. In order to prove the same, the prosecution has examined the Medical Officer who has conducted the post-mortem of the deceased as PW – 1 at Exhibit – 27.

7.1 PW – 1 in his deposition has categorically stated that the external bodily

injuries sustained by the deceased could be possible by the shot of arrows from a bow and that three injuries, viz. injury no. 5, 6 & 8, out of the total injuries sustained by the deceased, were hit on the vital part of the body. This witness has further deposed that all the injuries were anti-mortem and that they were sufficient in normal course to cause death.

7.2 If we consider the evidence led by this witness (PW – 1 at Exhibit – 27) in light of the post-mortem report at Exhibit – 28, it would lead us to a definite conclusion that the said three injuries, referred to herein above, were sustained by the deceased on account of the shot of arrows from a bow by the appellant. Since the learned Advocate for the appellant has not disputed the aspect of homicidal death, we are not discussing the medical evidence in detail. Apart from the above, the evidence on record in the form of inquest 'panchnama' at Exhibit – 42, also supports the case of the prosecution. We are

in complete agreement with the findings arrived at by the trial Court with respect to the aforesaid fact.

8.0 Now, once it is established that the deceased died a homicidal death, the only question that requires consideration by this Court is as to whether the evidence on record, viz. in the from of depositions of PW – 3 at Exhibit – 38, PW – 4 at Exhibit – 39 and PW – 5 at Exhibit – 40, are sufficient enough to connect the appellant with the crime in question. Having gone through the evidence led by the above-said three witnesses, what transpires is that the appellant, after reaching the scene of offence, shot arrows from a bow at the deceased on account of which the deceased sustained severe bodily injuries and these witnesses, on noticing the same, ran away from the scene of offence.

8.1 Therefore, the question that is now required to be considered by this Court is as to

whether the evidence led by these three witnesses are trustworthy or not. In order to ascertain the same, we would like to refer to certain facts which are not in dispute. All the said three witnesses, viz. PW – 3, PW – 4 & PW – 5, are women and that, on the date of incident, all of them had gone to do labour work at the agricultural field, along with the deceased. The appellant and the said three witnesses reside in the same village, belong to the same community and are also known to each other. Therefore, in such case, no question of mis-identification would arise. It is quite natural that when such brutal act, as has been done by the appellant, is performed in broad day-light and that to in an open area, person/s who may have witnessed the said incident, shall not wait there but, flee the said place. Moreover, the said three witnesses, being poor women labourers, it is possible that on noticing the brutal act of the appellant, they might have got frightened and, therefore, ran away from the spot. Thus, merely because these

three witnesses ran away from the scene of offence after its occurrence, their evidence could not be discarded. Thus, from the evidence led by these witnesses, it is proved beyond doubt that the appellant and none else had inflicted the said injuries to the deceased.

8.2 It is true that in their cross-examinations, these witnesses have admitted that some shots of arrows from a bow had gone behind them. However, there is no further cross-examination on that line. It could be possible that while the said three witnesses were trying to flee the place of offence, the said event might have taken place or it could have taken place at the time when they were present at the said place. Be that as it may, we are not entering into the same, as the said fact has no relevance on the final outcome in this appeal. From the evidence discussed herein above, we are of the opinion that the prosecution has been successful in establishing the guilt of the

appellant beyond doubt.

9.0 It may be noted that though charge was framed against four other accused persons, their presence at the scene of offence has not been established. The said fact is also evident from the cross-examinations of the above-said three witnesses. But, so far as the appellant is concerned, his presence at the scene of offence at the relevant point of time, has been proved beyond doubt. The motive behind the commission of the said offence is also established.

10.0 In view of the above discussion, we are of the considered opinion that the prosecution has succeeded in proving beyond doubt the guilt against the appellant. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

11.0 In the result, the appeal is dismissed. It is stated at the bar that the appellant is absconding since January 2007 and, therefore, the respondent – Authority is directed to do the needful in that regard. Office is directed to send the records & proceedings to the trial Court concerned forthwith.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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